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S. B. 21

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

FILE: B-191805

DATE: July 3, 1978

MATTER OF: Aydin Controls

DIGEST:

1. Question concerning proper product classification code for small business size status determination is not for consideration by GAO as conclusive; authority is vested by statute in SBA.
2. Question concerning small business size status is not for consideration by GAO as conclusive authority over such matters is vested by statute in SBA.

The Sacramento Army Depot, Sacramento, California, issued invitation for bids (IFB) No. DAAG08-78-B-0110 on April 7, 1978, for computer peripheral equipment. The solicitation was a 100-percent small business set-aside. Under the solicitation, bids were opened on April 26, 1978, and two bids were received, one from Aydin Controls and one from Ramtek Corporation.

Aydin Controls protests the product classification code of 3662 contained in the solicitation and the small business status of Ramtek Corporation.

Aydin Controls contends that the procuring agency should change the product classification code to 3573, as being a more accurate description of the product. The product classification code in question goes to the size status of small business firms eligible to compete for this procurement. Under product classification code 3662 a firm cannot be "small" if it has more than 750 employees.

Under 15 U.S.C. § 637(b)(6) (1976), the Small Business Administration (SBA), and not this Office, is empowered to conclusively determine matters of small business size status for Federal procurement purposes. Under 15 U.S.C. § 634(b)(6) (1976), the SBA has the authority to make such rules and regulations as are

deemed necessary to carry out the authority vested in the SBA by this chapter. Pursuant to this authority, as implemented by title 13 of the Code of Federal Regulations, part 121 (1977), and Armed Services Procurement Regulation (ASPR) § 1-703(c)(2) (1976 ed.) appeals from product classification determinations made by contracting officers for the purpose of Government procurement are to be reviewed and decided by the SBA's Size Appeals Board. This Office has consistently refrained from deciding issues related to a firm's size status. Sachs/Freeman Associates, Inc., B-190990, January 24, 1978, 78-1 CPD 65; Information Services Industries, B-188099, April 18, 1977, 77-1 CPD 269; Pacific American Airlines, B-187504, B-187505, October 13, 1976, 76-2 CPD 330; Limpio Industries, B-187255, September 30, 1976, 76-2 CPD 301; Merritt Enterprises, Inc., et al., B-186412, June 16, 1976, 76-1 CPD 382.

However, we note that the protester's challenge to the product classification code employed in this solicitation would be untimely if now filed with the Size Appeals Board. Pursuant to ASPR § 1-703(c)(2) (1976 ed.), an appeal from a product classification determination must be filed before bid opening. In the present case, Aydin Control's protest was filed after bid opening.

With regard to Aydin's challenge to the small business status of Ramtek, as noted above, under 15 U.S.C. § 637(b)(6) (1976), it is the duty of SBA, and not this Office, to determine whether a concern is small business for purposes of a particular procurement and SBA's determination is conclusive upon the procurement agency involved. Southern Sportswear, Inc., B-186899, July 27, 1976, 76-2 CPD 86; CADCOM, Inc., B-189913, February 16, 1978, 78-1 CPD 137.

However, we note that due to Aydin's challenge concerning the small business status of Ramtek, the contracting officer of the Sacramento Army Depot, on her own motion, has requested a ruling from the SBA as to the status of Ramtek, pursuant to ASPR § 1-703(b)(2) (1976 ed.).

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In view of the above, the protest is dismissed.

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for Paul G. Dembling
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